

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1522 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

ABDULVAHEED ABDULSALAM BAKRAWALA

Appearance:

PUBLIC PROSECUTOR for Petitioner

MR DM THAKKAR for Respondent No. 1, 2

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/01/97

ORAL JUDGEMENT

1. The petitioner, being aggrieved by the judgment and order dated 21st September, 1989 passed by the learned Joint District Judge & Additional Sessions Judge, partly allowing the Criminal Appeal No.25/88 of the respondents herein, has preferred the present Special Criminal Application under Article 226 of the Constitution of India. By his order dated 21st

September, 1989 , learned Additional Sessions Judge set aside the order of confiscation of the truck no. GRY 3060 belonging to the respondents, passed by the Dy.Conservator of Forest, Godhra Division, Godhra, and by substituting the said order, passed order of imposing penalty of Rs.5000/-.

2. The forest officers of Panchmahals district, intercepted the truck bearing no. GRY 3060, said to be belonging to the respondents at about 11-30 p.m. on 4.4.1985 in which truck, about 60 wooden boxes of different sizes were alleged to be transported without any pass or permit. The value of the goods/woods was estimated to be Rs. 19,520/-. The said goods and the truck were brought before the competent authority i.e. Dy.Conservator of Forest who, after issuing necessary notices and hearing the respondents, ordered to confiscate the said goods and the truck as well in exercise of his powers under section 61(A) of the Indian Forest Act, 1927, as amended by the Gujarat Amendment Act.

3. The respondents being aggrieved by the said order, preferred appeal being Criminal(Forest) Appeal No.25/85 in the Sessions Court of Panchmahals at Godhra. The learned Additional Sessions Judge, Panchmahals at Godhra, disposed off the said appeal by judgment and order dated 21st September, 1989, allowing the appeal partly by substituting the order of penalty of Rs. 5000/- instead of confiscation of the truck. On the premises that the order of confiscation of the truck passed by the competent authority was harsh, inadequate and inconsistent with the facts and circumstances of the case inasmuch as the goods/woods worth Rs. 20,000/were recovered from the offending truck. The learned Additional Sessions Judge, having considered the facts and circumstances of the case in para 11 and 12 of the impugned judgment, thought it fit that the order of confiscation of the truck was required to be substituted by imposing penalty by Rs.5,000/-. It is against this order, the State has preferred the present petition under Article 226 of the Constitution of India.

4. I have heard Mr. D.N.Patel, learned APP for the petitioner-State. He submitted that the impugned order of imposing the penalty is improper as such offences are repeatedly committed by the petitioners. However, there is nothing on record to show that any such offence is alleged to have been committed by the respondents herein. As against this, the case of the respondents is that the goods were being transported from Rajasthan to Lunavada

where the respondents reside. Therefore, having regard to overall facts and circumstances of the case, the order as to imposition of penalty cannot be said to be illegal and improper so as to warrant interference by inviting extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. In the result, the petition fails and is dismissed. Rule discharged. Ad-interim relief stands vacated.